

Memorandum

TO: DRIVING A STRONG
ECONOMY COMMITTEE

FROM: Leslye Corsiglia and
Stephen M. Haase

**SUBJECT: POLICY REVIEW OF THE
SECONDARY UNITS PROGRAM**

DATE: August 5, 2003

Approved

Date

COUNCIL DISTRICT: Citywide

RECOMMENDATION

We recommend that the Driving a Strong Economy Committee direct the Administration to review the findings adopted by the City in 1984 and included in Ordinance No. 21663 related to the limitation on secondary units and, if appropriate, propose any needed or beneficial updates or amendments.

SUMMARY

Beginning in 1991, with the development of the City's first Comprehensive Housing Affordability Strategy (CHAS; now called the Consolidated Plan), housing advocates and residents have pressed the City to study the feasibility of revisiting the City's secondary residential unit ordinance which makes findings to prohibit secondary units as allowed under the State's original 1980s secondary unit legislation. These groups have indicated that, in light of the deepening affordable housing crisis, every avenue should be pursued to provide units affordable to lower-income households, including secondary units.

In the fall of 2002, the Driving a Strong Economy Committee and the former Economic Development and Environment Committee (EDEC) requested that the Department of Housing and the Department of Planning, Building, and Code Enforcement return to the Committee to discuss the subject of secondary residential units. This request was also included as a recommendation in the Mayor's Housing Task Force Report.

Meanwhile, the Governor signed into law a measure that alters the public approval process used by local governments to approve the development of secondary residential units. The bill, AB 1866, took effect on July 1, 2003. The new law has prompted the Administration to review the previous findings made by the City of San José limiting the development of new secondary units within the City. This memorandum serves to outline the changes in the law pursuant to AB 1866 (and subsequent, pending legislation) and how they may generally relate to existing San José ordinances and policies.

BACKGROUND

Definition

A secondary unit is an independent self-contained second living area that can be attached or detached from an existing single-family dwelling. The secondary unit is characteristically smaller than the primary unit, and may share, at most, an entrance, yard and parking spaces. Secondary units, also known as accessory units and granny flats, are units that are typically added to an existing single-family dwelling by the property owner, who may or may not reside on the site.

Advocates of secondary units argue that some of the benefits include providing older homeowners an opportunity to generate additional income, increasing the supply of low-and moderate-income housing, reducing the incidence of illegal and substandard secondary units and small increases in property appraisals, which generate additional tax revenues.

State Law Requirements

Since the early 1980s, State law, specifically Government Code Section 65852.2, has required that a local agency must either adopt an ordinance providing for the development of secondary units or make certain findings if it wants to preclude the development of secondary units. The findings allowing for the preclusion of secondary units must indicate "specific adverse impacts on the public health, safety, and welfare that would result from allowing secondary units within single-family and multifamily zoned areas justify adopting the ordinance." The findings must also include acknowledgement that the ordinance precluding secondary units may limit housing opportunities of the region.

On September 29, 2002, the Governor signed AB 1866, which substantially limited the constraints municipalities could place on the development of secondary units (Chapter 1062, Statutes of 2002). The bill requires that an application for a secondary unit be considered ministerially without discretionary review or hearing. Additionally, the law provides that cities and counties shall not be required to adopt or amend an ordinance in order to allow second units and that they may charge a fee to cover costs incurred as a result of this bill (for providing ministerial approval).

Specifically, the law allows local governments to adopt an ordinance that designates allowable areas and development standards related to things such as parking, height, setback, lot coverage, architectural review, and maximum size of a unit. However, under AB 1866, if a community doesn't adopt a local ordinance either permitting second units or make the findings to preclude them as required under Government Code Section 65852.2, then it must approve requests for second units that meet the following criteria:

- 1) The unit is not intended for sale and may be rented;
- 2) The lot is zoned for single family or multifamily use;
- 3) The lot contains an existing single-family dwelling;
- 4) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling;

- 5) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area;
- 6) The total area of floor space for a detached second unit shall not exceed 1,200 square feet;
- 7) Height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located will be consistent;
- 8) Local building code requirements that apply to detached dwellings will be applicable; and
- 9) Approval by the local health officer where a private sewage disposal system is being used.

Additionally, the law continues the requirement that a local agency shall not adopt an ordinance which precludes second units within single family or multifamily zoned areas unless it can make findings acknowledging that the ordinance may "limit housing opportunities of the region" and further contains findings that the "specific adverse impacts on the public health, safety, and welfare would result from allowing secondary units within single-family and multifamily zoned areas."

While the current law gives local governments a little flexibility to establish development standards, a bill introduced earlier this year, AB 1160, would more narrowly limit the ability of local government to include standards in local ordinances as to the design, location, size and parking impacts of secondary units by placing these standards into State law. AB 1160 was held in the Assembly Housing and Community Development Committee for further review and will now become a "two-year" bill. This means that it will not progress in the Assembly this year, but may be considered in 2004.

City Compliance with State Requirements

Pursuant to the requirements of State Law, the City of San José adopted findings to preclude second units, except as such units may be permitted under existing provisions of Title 20 of the San Jose Municipal Code, with the passage of Ordinance No. 21663, adopted on May 15, 1984 (see attachment A).

As noted above, the findings are, in part, required to indicate that there would be adverse health, safety and welfare impacts if the municipality making the findings were to allow secondary units. The findings are required to be accompanied by an acknowledgement by the municipality that it is aware of the negative effects to the supply of housing by limiting such secondary units. The City's 1984 findings state that there would be adverse health, safety and welfare impacts caused by the addition of housing units beyond those planned for in the General Plan, which, in 1984, called for the Citywide addition of planned units at the capacity of the City's Capital facilities, such as the Water Pollution Control Plant and the City streets existing and planned for at the time. The rationale of the City's 1984 findings was that the addition of secondary units would have overburdened those facilities and streets, causing negative impacts to the public health, safety and welfare.

ANALYSIS

With the passage of AB 1866 last year and the pending measure, AB 1160, an interdepartmental working group comprised of the Department of Housing, the Department of Planning, Building and

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Code Enforcement, the Redevelopment Agency, and the Attorney's Office has taken a closer look at the impacts these new laws would have if the City were to adopt a secondary unit policy.

One conclusion reached through the working group's discussions is that the findings made in the City's 1984 ordinance, which preclude second units in the City of San José for health and safety reasons, should be reviewed and, if needed, updated to reflect the current situation in the City.

PUBLIC OUTREACH


A draft of this memorandum was presented to the Housing Advisory Commission (HAC) on July 10, 2003. Many Commissioners and guests present at the meeting stipulated their desire to see a policy in place, which would make secondary residential units legal in San José. The Commission also pointed out that in May 2003 a memorandum was sent to the Mayor and Council expressing support for a policy that would allow secondary units to be phased in over time. The Commission further noted that it would like to stay apprised of the issue and encouraged the City to pursue meetings with public members prior to recommending action by the Council.

No additional outreach has been conducted to this point, however, the topic of second units is of interest to a number of neighborhoods including several of the Strong Neighborhoods Initiative (SNI) areas. Should the City Council recommend any further action regarding secondary residential units, extensive public outreach should be incorporated into the working group's schedule.

CONCLUSION

The data contained in the findings of Ordinance No. 21663 should be reviewed, and, if needed, updated based on the City's current Smart Growth policies and State law, unless the City decides to implement an alternative ordinance expanding the allowance for secondary units. In order to preclude secondary units, as required under state law, findings would need to show that secondary units would still pose specific adverse impacts on the public health, safety, and welfare. Such findings would also require an acknowledgement by the City that it is aware of the possibility that the City's policy in this area could limit housing opportunities in the region. Therefore, the City should review its findings and determine 1) whether such findings remain supportable or should be modified and 2) if they should be modified, base any new findings on current data and information. It is further recommended that the Driving a Strong Economy Committee ask the working group to come back to the Committee with a recommendation by October and that any action by Council regarding secondary residential units should occur by early 2004.


LESLIE CORSIGLIA
Director of Housing


STEPHEN M. HAASE
Director of Planning, Building and
Code Enforcement

Attachment
"A"

ORDINANCE NO. 21663

AN ORDINANCE OF THE CITY OF SAN JOSE, PURSUANT TO THE REQUIREMENTS OF SECTION 65852.2 OF THE CALIFORNIA GOVERNMENT CODE, TO PRECLUDE SECOND UNITS WITHIN THE ONE-FAMILY, TWO-FAMILY, AND MULTI-FAMILY RESIDENTIAL DISTRICTS, EXCEPT AS PROVIDED IN EXISTING PROVISIONS OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE.

WHEREAS, Section 65852.2 of the California Government Code requires cities and counties to provide for the creation of second units in single-family and multi-family residential zones unless a preclusionary ordinance is adopted pursuant to Subsection (c) of said Section 65852.2; and

WHEREAS, Subsection (c) of Section 65852.2 of the California Government Code provides that no city or county shall adopt an ordinance which totally precludes second units within single-family and multi-family zoned areas unless the ordinance contains findings acknowledging that such action may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multi-family zoned areas justify adopting such an ordinance; and

WHEREAS, the Council has considered reports which are part of the public record, taken testimony and evidence, and conducted deliberations on the provision of second units within the City of San Jose in full session on June 14, 1983, before its Community Development Committee on October 17, 1983, before its Committee of the Whole on November 11, 1983, and again in full session on December 6, 1983; and

WHEREAS, the Council hereby intends to adopt an ordinance to preclude second units within the One-Family, Two-Family, and Multi-Family Residential Districts, except as such units may be permitted under existing provisions of Title 20 of the San Jose Municipal Code, based on the findings required to be made pursuant to said subsection (c) of Section 65852.2:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 1. The Council, after full consideration, hereby expressly finds that the allowance of second units within the One-Family, Two-Family, and Multi-Family Residential zoning districts of the City of San Jose, except as provided in existing provisions of Title 20 of the San Jose Municipal Code, will have specific adverse impacts on the public health, safety, and welfare of the community. In particular:

- A. It is estimated that second units could be created in conjunction with ten percent of San Jose's existing and projected single-family housing units. As such, almost 26,000 second units could be created in the City by 1990, and it is expected that certain areas of the City, because they contain larger single-family lots, would be more heavily impacted with such units. These areas are in Council Districts 3, 5, 6, and 10.
- B. As of January 1984, the City of San Jose has a population of approximately 680,000 and administers an area of some 168 square miles. The city includes a unique combination of aging central city neighborhoods, particularly those in Council Districts 3, 5, and 6, and rapidly expanding suburban areas, each with its own demands on City resources. The creation of second units would put additional strains on the City's budget and would contribute to cost and revenue problems and pressures which are unique to San Jose.
 1. Because of the imbalance of jobs and housing with respect to other local jurisdictions, San Jose in 1982-83 had the second lowest per capita assessed evaluation of the fifteen cities in Santa Clara County. San Jose had approximately 50 percent of the County population and only 40 percent of the assessed valuation. The low tax base per unit of population shows up in the increasing strain on the City to finance municipal services relative to most other cities in Santa Clara County.
 2. The 1981-82 budget included provisions for service at levels below median levels of other major cities in the western United States, and below San Jose 1976-77 levels.
 3. San Jose has a larger number of capital facilities, such as streets and sewer lines, than comparably populated cities in the western United States, but a significantly smaller budget for maintaining and operating such facilities.
 4. For example, San Jose has an extensive sanitary sewer system and, at the same time, a limited budget for maintaining that system. The system is 160 percent of the median system size of other western cities of similar population, yet the level of maintainence is 33 percent of what these other cities provide.

5. Projections of costs and revenues show major unfunded needs for the construction, replacement and rehabilitation of the infrastructure facilities required to maintain adopted level of service standards. These unfunded capital needs are estimated at \$146.8 million and are necessary to accomodate buildout of the General Plan absent any additional planned or unplanned growth such as the creation of second units.
 6. From 1970 to 1980, San Jose experienced a 45 percent increase in population and a 258 percent increase in index crimes (murder, rape assault, burglary, robbery, auto theft, and grand theft). This increase in the number of index crimes is nearly six times higher than the population increase. Police staffing while it has been expanded has not increased commensurate with new demands for service. Currently, San Jose has 1.37 sworn officers per 1000 population, a ratio which is the lowest of the ten major cities in California.
 7. During the ten year period from 1971 through 1981, Fire Department staffing levels in the City relative to population declined from .98 authorized sworn personnel per 1000 population to .92 per 1000. At this level, San Jose ranked ninth of the ten major California cities in terms of Fire Department staffing per capita.
- C. Ultimate infrastructure capacities in San Jose are designed and constructed to serve planned land uses as set out in the Land Use/ Transportation Diagram of the General Plan. As the development of the city approaches General Plan buildout, there will be increasing limitations on the ability to expand existing infrastructure systems to accomodate unplanned changes in land use such as the creation of second units. Departures from planned land uses will require the construction of new facilities.
1. San Jose's 106.28 millions-of-gallons-per-day (MGD) share of ultimate Water Pollution Control Plant (WPCP) capacity will accomodate a buildout of the land uses provided in the General Plan to within 1/10th of an MGD. This buildout is expected to occur by the mid 1990s. More growth than is contemplated in the General Plan, such as the creation of second units, would require additional sewage treatment capacity.
 2. The ultimate sanitary sewer system in San Jose is designed to accomodate the land use pattern provided in the General Plan. Changes in the density of such land use, such as the creation of second units, would cause localized sewer capacity deficiencies. There are presently over 1600 miles of sanitary sewer lines in the City of San Jose. Construction to complete the sanitary sewer system for General Plan buildout is estimated to cost \$35.6 million. Projected revenues for this purpose are \$29 million in Connection Fees, leaving an anticipated shortfall of \$6.6 million.
 3. It is projected that there will be a \$26 million shortfall in revenue for construction of the \$82.5 million worth of city streets required to accomodate General Plan buildout after completion of projects

identified in the 1983-88 Capital Improvement Program. In addition, there is an identified \$33 million need to replace or rebuild minor neighborhood streets in older areas of San Jose which were not originally constructed to City standards. It is these older areas which would receive the larger share of second units. No funding source for this need has been identified.

4. The General Plan provides for a land use pattern and transportation system which will be marginally in balance at an overall traffic level-of-service 'D' at buildout, assuming that changes in travel behavior (transit diversion, reduced trips, etc.) materialize as forecasted. While the overall level-of-service will be 'D' at buildout, some areas will experience levels-of-service below 'D', such as the Cambrian-Pioneer area if improvements are not made to Route 85, and other areas of the city if unplanned development or density increases take place.

- D. Many areas of the City, particularly older neighborhoods, are experiencing traffic problems on local streets. These problems involve excessive traffic volumes, speeding, noise, and other traffic-related phenomena. In many cases, these neighborhood traffic problems have resulted from the lack of major regional transportation facilities, particularly expressways and freeways, which have been committed to by the state but which remain unfunded. Traffic related problems can degrade the quality of life for neighborhood residents, and would be exacerbated by the creation of second units with the additional population, traffic, and parking demand they would generate in various neighborhoods.

For example, each second unit would generate the need for an average of one additional parking space. With an estimated 26,000 second units being created in San Jose by 1990, or in conjunction with ten percent of the city's single-family housing stock, the impact on certain neighborhoods could be significant. While the requirement could be made for provision of additional off-street parking for each second unit created, the practical effect of allowing second units would be additional on-street parking in many neighborhoods. This effect would be especially serious in older neighborhoods, especially those in Council District 3, which would receive the larger share of second units and which already have critical on-street parking problems. It would also be serious in the many newer neighborhoods which are already characterized by multi-car families.

Section 2. The Council hereby acknowledges and finds that the preclusion of second units within the City of San Jose will limit housing opportunities in the region. However, San Jose has played and will continue to play a major role in the provision of regional housing opportunities:

- A. Under the current General Plan, San Jose will by 1990 add approximately 84,000 dwelling units to its 1975 stock of approximately 185,000 dwelling units.

- B. In each year from 1970 to 1980, over half of the new dwelling units authorized in Santa Clara County were in San Jose. That share had reached 60 percent by 1980. By comparison, from 1975-80, new jobs in other County jurisdictions increased by 109,000, while dwelling units in these jurisdictions increased by only 17,300. In 1983, San Jose provided housing for 74,214 people employed outside of the City.
- C. Along with providing a large share of the new housing, San Jose has also provided a wider range of prices and a majority of the lower-priced housing in Santa Clara County. For the first nine months of 1983, San Jose's share of the residential units in the County was 70 percent, while its share of the residential valuation was only 49 percent. In addition, the median price of non-condominium residential units in San Jose was the third lowest in the County.
- D. Over the past two years, San Jose has adopted a number of ordinances aimed at streamlining the approval of housing projects proposed by the private sector in San Jose. These include the following:
 - 1. New provisions for City as well as private initiation of Planned Development (PD) zoning. Such zoning is especially important in implementing the mixed-density and mixed-use designations provided in the General Plan, as well as providing for more flexible residential and commercial development and redevelopment of the Downtown area.
 - 2. New conforming zoning designations which allow for shorter-time processing of certain rezoning proposals which already conform to the General Plan.
 - 3. New provisions which allow for the placement of mobilehomes on individual single family lots.
 - 4. New provisions for regulating the conversion of mobilehome parks with permanent occupancy to travel trailer parks with transient occupancy.
 - 5. New provisions regulating the conversion of apartments and rental housing to condominiums and providing consumer protection for potentially displaced residents.
- E. In addition to the above, San Jose is currently implementing the following housing assistance programs:
 - 1. Single-family Mortgage Revenue Bond Program which provides financing for ownership housing units for low and moderate income households at below market mortgage rates. In March 1983, the City sold \$43.4 million worth of these mortgage revenue bonds. The bond proceeds are being used to make 9.8 percent 30-year fixed term mortgages to low and moderate income first time homebuyers in 22 developments in San Jose. It is anticipated that 500 or more homes will be financed through this program.
 - 2. Multi-family Housing Bond Program which provides financing of multi-family rental projects, 20 percent of which must be set aside

for low-income families. The City has issued bonds for a 360-unit project and two other projects totaling 368 units are pending. From these developments, 146 low-income units will be provided.

3. CDBG Funds which since 1975 have been used in rehabilitating some 650 residential units.
4. The 20 percent Redevelopment Housing Fund which uses 20 percent of the revenue received through tax increment financing of redevelopment projects for low and moderate income housing. It is estimated that this fund will contain \$30 million by 1986. So far, this fund has been used for the 45-unit Canoas Garden ownership project, the 78-unit Chai House senior citizen project, 6 town homes at St. James and Sixth Streets, and 17 units of manufactured housing in the Mayfair One Project in Alum Rock.

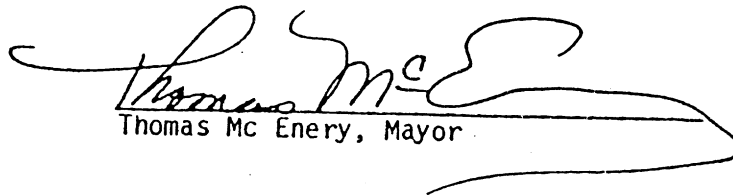
The above described programs are helping to address the housing problem and fulfill the goals and housing needs as stated in San Jose's Housing Assistance Plan. The provision of second residential units in single-family districts does not necessarily equate with providing housing for low and moderate income persons.

Section 3. The provisions of Subsection A of Section 20.24.020, Subsection A of Section 20.24.150, and Subsection A.1 of Section 20.24.260, of Title 20 of the San Jose Municipal Code, which limit "One-family Dwellings" to "only one such dwelling per lot or parcel," in the One-Family, Two-Family, and Multi-Family Residential Districts, are hereby reaffirmed. The Council declares that it is the intent of these provisions to preclude the creation of "second units," as defined in Subsection (d) of Section 65852.2 of the California Government Code, in said Residential Districts, except as provided in existing provisions of said Title 20. Under these existing provisions, attached "second units" which convert "One-family Dwellings" to "Two-family Dwellings" are permitted under Subsection I of Section 20.24.150, and ^(now Subsection A.10) Subsection A.9 of Section 20.24.260, in the Two-Family and Multi-Family Residential Districts. In addition, second units may be permitted in appropriate residential areas through adoption of (PD) Planned Development zoning which combines with base Residential zoning.


Section 4. The City Clerk is hereby directed to transmit a copy of this ordinance to the California Department of Housing and Community Development.

PASSED FOR PUBLICATION OF TITLE this 15th day of May, 1984, by the following vote:

AYES: ALVARADO, BEALL, FLETCHER, HAMMER, LEWIS, RYDEN, SAUSED0,
WILLIAMS AND McENERY
NOES: ESTRUTH
ABSENT: IANNI


Thomas Mc Enery, Mayor

ATTEST:


Helen Jackson, City Clerk

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